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Supreme Court of the United States

OCTOBER TERM, 1932

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE,
PETITIONER,

vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION OF WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

STATEMENT OF THE CASE

This is a suit brought in the Chancery Court of Blount County, Tennessee, by the State of Tennessee against Arthur Blair, et als to collect a property tax assessed and levied upon, among other property, a tract of land owned by Joseph A. Leake, a non compos mentis, either in his own name or in the

name of his guardian for him. Said tract of land was purchased with funds paid to the guardian for the benefit of the veteran under Sec. 22 of the World War Veteran's Act of 1924 (38 USCA Secs. 454, 421, et seq.)

The Chancellor before whom the case was heard decreed that the property was not taxable by the State, holding that property purchased by the guardian with the funds of a World War Veteran was not subject to taxation by the State and County. From the judgment of the Chancellor the respondent in this case appealed to the Supreme Court of Tennessee where the judgment of the Chancellor was reversed.

Attorneys for the petitioner have, we think, stated the facts fully and correctly and we, therefore, will not comment on them further.

BRIEF OF LAW AND ARGUMENT

Petitioner has made only one assignment of error to the action of the Supreme Court of Tennessee, in passing on the case at bar, which is as follows:

> "'The Supreme Court of Tennessee erred in holding that the property in question was not exempt from taxation."

This question, so far as we have been able to ascertain, has never been passed upon by this Court.

Among the decisions of the State Courts bearing upon this question, we find that there is a very decided conflict of authority.

The powers of Congress relating to taxation are enumerated in Art. I, Sec. 8 of the Federal Constitution. From a purview of this section of the Constitution it will be seen by the Court that there is no limitation whatever under said Section prohibiting a State and County from levying and collecting taxes on real estate.

In Art. II, Sec. 28 of the Constitution of Tennessee, and in Secs. 1084 and 1085 of the Code of Tennessee the provisions relating to taxable and exempt property provide in substance as follows:

> "All property, real, personal or mixed, shall be taxed, but the Legislature may exempt such as may be held by the State, by counties, cities or towns and used exclusively for public or corporation purposes, and such as may be held for literary or educational purposes, and shall exempt one thousand dollars worth of personal property in the hands of each tax payer, and direct product of the soil in the hands of the producer of his immediate vendee."

It is obvious that the provisions of the Constitution of Tennessee, as well as the Legislative provisions, import no intent on the part of the makers of the Constitution of Tennessee, or of the Legislature, to exempt any property within the State from taxa-

tion, other than that which has been specifically provided for. Neither the Constitution of Tennessee, nor any Act of the Legislature, expressly or impliedly exempt the product of money, received by World War Veterans from the Federal Government, from taxation.

In the case of *Martin* v. *Guilford County*, (a North Carolina case), 158 E. E. 147; 76 A. L. R., 978, the veteran, Martin, with compensation received under the World War Veteran's Act of 1924 (38 USCA Secs. 454, 421, et seq.), purchased some real estate and personal property. The property thus purchased was taxed by Guilford County. The taxes were paid under protest. A short time after payment of the taxes, notice was given to the proper official demanding a refund of the amount paid, setting up as a reason for the demand that the property had been purchased with funds which had come to him as a World War Veteran, and claiming that the property purchased with said funds was exempt from taxation.

The case was heard upon an agreed statement of facts. A judgment was rendered against the World War Veteran, Martin. From this judgment he appealed to the Supreme Court of North Carolina, where the facts were reviewed and judgment of the lower Court affirmed.

In delivering the opinion of the Court, Judge Connor said:

"The question of law presented for decision by this appeal is whether property, real or personal, located in this state, and otherwise subject to taxation is exempt from such taxation under the laws of the United States, because said property is owned by a veteran of the World War, who purchased and paid for the same with money paid to him by the government of the United States, under the provisions of the act of Congress for the relief of veterans of the World War. The decision on this question involves, primarily, a construction of the provisions of said act found in sections 454 and 618 of Title 38, USCA. Whether Congress has the power, under the Constitution of the United States, express or implied, to exempt property in this state from taxation under its laws, need not be discussed or decided, if these sections, properly construced, do not show that Congress had the purpose or intent to exempt such property from taxation under the laws of this state by the enactment of said section."

The said North Carolina case had a companion case, *Lambert* v. *Guilford County*, ——N. C.——; 158 S. E. 849, in which case a similar question was raised. The veteran had purchased real and personal property out of funds paid him by the Government under Section 22 of the World War Veteran's Act of 1924 (38 USCA Secs. 454, 421, et seq.). The Court held in this case that whether the Federal Constitution gave Congress the power to exempt such property purchased with funds received under

said World War Veterans' Act from taxation by the State was not material, in as much as the World War Veterans' Act showed no intent on the part of Congress to exempt property bought with funds received under said Act from taxation; that the said Act referred to money payable, and that when the money had been paid and the veteran had acquired unrestricted title and control thereof, and invested it in other property, that propery was taxable by the County and State.

So we respectfully insist that the funds in the case at bar were no longer payable to the veteran, but that the funds had already been paid, and hence the exemption provided in the said World War Veterans' Act of 1924 no longer attached to the funds or to the direct product of the funds.

Congress did not intend to exempt property purchased with funds realized from war risk insurance.

State ex rel Smith v. *Shawnee County* 132 Kan. 233, 294 Pac. 915;

Hibernia Sav. & L. Soc. v. *San Francisco*, 200 U. S. 310, 50 L. ed. 495;

McIntosh v. Aubrey, 185 U. S. 124, 46 L. ed. 837;

Choctaw, O. & G. R. Co. v. *Mackey*, 256 U. S. 531, 65 L. ed. 1076;

First Nat. Bank v. *Kentucky*, 9 Wall. 29, 34, 21 L. ed. 791, 793.

The only distinction between the two North Carolina cases, supra, and the case at bar, is that in the North Carolina cases the compensation was paid to the veteran himself, while in the case at bar the money was paid not to the veteran, but to his duly appointed guardian; for in the case at bar it is to be noted that the veteran himself was a non compos mentis, and consequently the only legitimate payment that could have been made would necessarily have to be made to the guardian.

Notwithstanding in the case at bar payment was made to the veteran's guardian, we submit that the same result should be had as was reached in the North Carolina cases, because payment to the guardian was payment to the veteran, in that the guardian was duly appointed by the State Court to represent the non compos mentis veteran in all his undertakings.

The question whether or not the intervention of a guardian between the Government and the veteran would change the situation was discussed by the Supreme Court of Kansas in the case of *State ex rel, Smith* v. *The Board of Commissioners of Shawnee County*, 132 Kan. 233; 76 A. L. R. 980. In the opinion in that case the Court said:

> "We conclude that the intervention of a guardian does not leave the pension funds still in the hands of the Government, so that they are still 'payable' or 'due' the ward as expres-

> sed by 38 USCA, section 454 so as to exempt them from assignment, execution, and taxes, but when paid to the guardian, the title and possession have both passed from the Government and they are no longer 'payable', and consequently not entitled to any exemption from taxes under Sec. 454."

The effect of the intervention of a guardian was just recently decided by this Court in the case of *Spicer* v. *Smith*, 77 U. S. Sup. Court (Law ed) 599. His Honor, Justice Butler, in delivering the opinion of the Court held in substance as follows: Payment of installments of war risk insurance and disability compensation (under the provisions of World War Veterans' Act of 1924) to the guardian of a mentally incompetent veteran vests title in the ward and operates to discharge the obligation of the United States in respect of such installments.

Quoting Justice Butler further in the opinion of the Court, he said:

> "The guardian, appointed by the Court was by the laws of the state given the custody and control of the personal estate of his ward, and was authorized to collect and receive the money in question."

We respectfully insist that in the case at bar, which is reported in 165 Tenn.——; 57 S. W. (2d) 455, the Supreme Court of Tennessee was correct

in holding that the State could tax the property purchased with funds received under the provisions of said World War Veteran Act.

The Supreme Court of Tennessee, speaking further on the case at bar (Transcript of Record, Page 15), laid down this further proposition of law:

> "It is settled in this jurisdiction and elsewhere that in the relation of the guardian and ward, the title to the property is in the ward, and that the possessions of the guardian is the possession of the ward and will inure to the ward's benefit under the Statute of Limitations. Cited *Williams* v. *Walton*, 16 Tenn. (8 Yerg.) 387; *Davis* v. *Mitchell*, 13 Tenn. (5 Yerg) 281. Such is the rule elsewhere, 28 C. J. 1128; 12 R. C. L. 1123."

Petitioner relies chiefly upon the case of *Rucker* v. *Merck*, 172 Ga. 793; 159 S. E. 501. This case does hold that property purchased with funds received from the Government under the provisions of the World War Veteran Act of 1924 is exempt from taxation. However, this holding is contrary to the great weight of authority on the question at bar, and we submit that the holding is contrary to sound rules of construction and reason.

Petitioner cites another case, *Wilson* v. *Sawyer*, 177 Ark. 492. This was a case in which certain funds of a disabled soldier were turned over to the Clerk of the Court to be held for the ward. These

funds were attached, but the Court dissolved the attachment and held that the funds were not subject to attachment until they came into the hands of Tom Sawyer, the veteran. This case is not a parallel case to the case of *Rucker* v. *Merck*, supra, for the reason that the guardian in this case had been discharged, and since the veteran had no guardian the funds were neither in the hands of the veteran nor in the hands of the guardian. This case, then, has no application in deciding the question at bar.

It is contended that the word "payable" as used in the World War Veterans' Act of 1924 (38 USCA Secs. 454, 421, et seq.) does not have the meaning of "due or to become due." This contention is made notwithstanding this Court's holding in the recent case of *Spicer* v. *Smith*, supra. Petitioner undertakes to get around the holding in the said case of *Spicer* v. *Smith* by insisting that the property involved in the case at bar concerns not a matter of title, but is contingent upon whether the funds have reached the veteran himself. Of course, this Court's answer to this proposition will depend upon a construction of the provisions of the World War Veterans' Act (38 USCA Secs. 454, 421, et seq.). We respectfully insist that upon the strength of a reasonable interpretation of the provisions of said Act, and upon the authorities cited herein, that the word "payable" as set out in said Act means "due or to become due." If the funds were paid to the guardian of the veteran, or to the veteran himself, the funds

were no longer payable, and consequently the exemptions of said Act do not apply, and therefore the property in question was not exempt from taxation by the State of Tennessee.

Respectfully submitted,

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